**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 521 of 1998**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RABANBHAI SANTUBHAI DHIKALE - Applicant(s)**
**Versus**
**STATE OF GUJARAT - Respondent(s)**

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**Appearance :**
MR BS PATEL for Applicant(s) : 1,
Ms. Archana Raval, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 06/07/2007**

**ORAL JUDGMENT**

1. The revisionist, original accused, has invoked the provisions of section 397 read with section 401 of the Code of Criminal Procedure Code, 1973 (for short, “the Code”) for challenging the judgment and

order dated 23.12.1997 passed by the learned Judicial Magistrate First Class, Karjan in criminal case No.1864/95 whereby the petitioner was convicted for the offence punishable under sections 279, 337, 338, 304-A of Indian Penal Code and sections 177 and 184 of the Motor Vehicles Act.

2. At the end of the trial, for the offence under section 279 and 304A of the Motor Vehicles Act, the present petitioner was convicted and awarded sentence of three months and fine of Rs.100/-, in default 15 days' simple imprisonment. For offence under section 304A of IPC, the petitioner was convicted and sentenced for six months simple imprisonment and fine of Rs.200/- and in default, 30 days simple imprisonment. For offence under section 337 of IPC, the petitioner was convicted and sentenced for one month simple imprisonment and sentenced for three months simple imprisonment under section 338 of IPC. For offence punishable under section 184 of the Motor Vehicles Act, the petitioner was convicted and sentenced for fine of Rs.100/- and in default, 10 days simple imprisonment. The petitioner was convicted for fine of Rs.50/- and in default 7 days simple imprisonment under section 177 of the Motor Vehicles Act. The above sentences had been ordered to run concurrently.

3. Against the said order, the petitioner preferred appeal being Appeal No.30/97 before the learned Sessions Judge, Baroda. The said appeal was dismissed and the judgment and order passed by the learned JMFC, Karjan was confirmed by the learned Sessions Judge, by judgment and order dated 25.6.1998. By filing this Revision, the petitioner has challenged both the orders passed by the lower court as well as the Appellate Court.

4. The facts of the case in nutshell are that, the incident in question took place on 2.10.1994 at about 4 p.m. on National Highway No.8, Near Oslam village at Nala No.161/2 when the petitioner was driving Tata Tempo (Truck) bearing No.MH 15.G.969. Other than the main driver, one more reliever driver and a cleaner were also in the said truck. It is alleged in the complaint that because of rash and negligent driving of the present petitioner, the accident took place and the truck turned turtled on the road. In this accident, one driver lost his life and the present petitioner also received injuries of fracture on his left leg. Complainant-Durganath Keshavnath Gauri, cleaner of the said truck has lodged complaint before the PSO, Karjan. On the basis of the said complaint, offence was registered and after investigation, charge sheet was filed for the aforesaid offence and the case was registered as criminal case No. 1864/95. The accused pleaded not guilty to the

charge, and the trial was commenced. At the end of the trial, the accused was held guilty as aforesaid.

5. Heard Mr Kamal Sojitra, for Mr B.S. Patel, learned advocate for the petitioner and Ms. Archana Raval, learned APP for the State. It is pertinent to note that in the said criminal case, the only witness-complainant, Durganath Keshavnath Gauri was examined and evidence was recorded Exh.28 by the learned trial Judge. According to his deposition, he was serving as cleaner of the said truck and on the day of the accident, two drivers were there in the truck. It is also stated before the court on oath that at the time of the accident, he was asleep in the truck and on hearing a loud crashing sound, he suddenly woke up to find the truck lying turtled. According to the evidence of this witness, the other driver who was sitting in the truck adjacent to the one driving also received serious injuries leading to his death on the spot. He specifically stated before the court that he did not know who was driving the truck at the time of the accident as there were two drivers in the truck. This is the only witness of the accident who specifically stated on oath that he had no knowledge as to how the truck was driven by the driver and he had nowhere, in his deposition, stated that because of the rash and negligent driving of the truck, the said incident took place. Panchnama of scene of offence was drawn by the Investigating Officer in

the presence of panchas produced at Exh.19 clearly shows that the truck was found turtled in the Nala between two roads. It is also an admitted position that the incident took place early in the morning. It is also pertinent to note that the present petitioner also received serious injuries of fracture on left leg. Merely because the truck turned turtle and one person has lost his life, it cannot be presumed that the driver was liable for rash and negligent driving. It is for the prosecution to prove beyond reasonable doubt that the vehicle was driven in such a reckless manner which has taken away life of one person. In this case, the prosecution has failed to prove rash and negligent driving and thereby the learned JMFC has committed error in holding the accused guilty of the offence. The learned Sessions Judge also failed to record any evidence but confirmed the judgment passed by the learned JMFC, Karjan. Except Panchnama, there is no cogent and reasonable evidence produced by the prosecution in coming to the conclusion that the accused is guilty of the offence. It is also pertinent to note that the panchas of the scene of offence have also turned hostile and they have not supported the prosecution.

6. In view of the above, the prosecution has miserably failed to prove beyond reasonable doubt the case against the present accused and, therefore, this Revision is liable to be allowed and is hereby allowed. The judgment and order dated 23.12.1997 passed by the

learned JMFC, Karjan in criminal case No.1864/95 and confirmed by the learned Sessions Judge in Appeal No.30/97 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

**[M.D. SHAH, J.]**

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